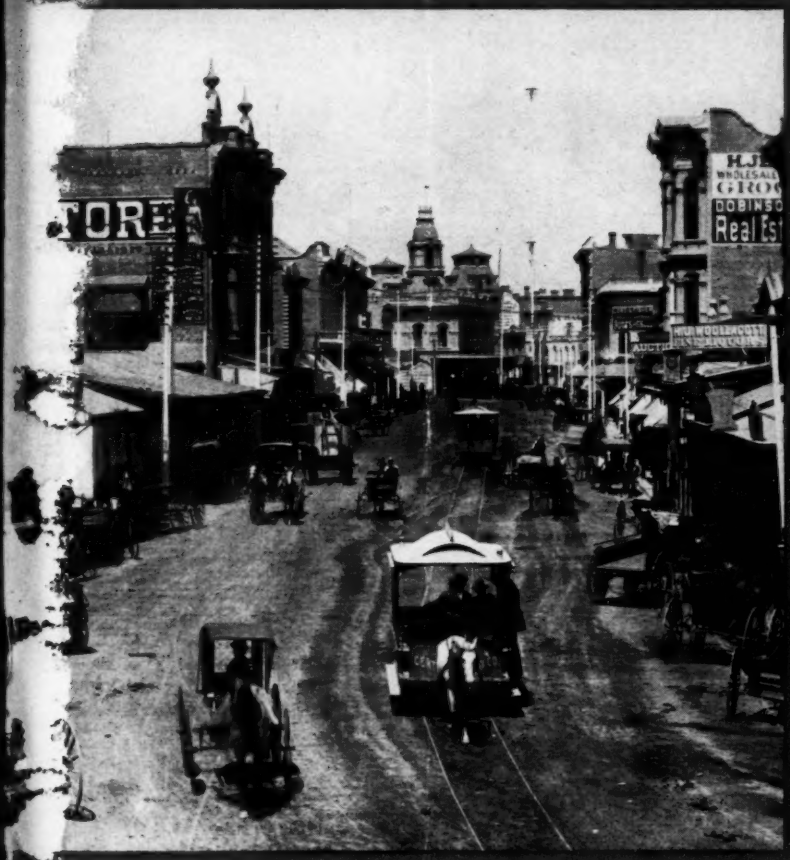

SEPT. 1960

The Los Angeles BAR BULLETIN

Vol. 35 No. 11

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THE PRESIDENT'S PAGE

☆ ☆ ☆ ☆ ☆ ☆ ☆ ☆ GRANT B. COOPER

» » OUR ASSOCIATION can take pride and satisfaction in the fact that so many members practice what Theodore Roosevelt wisely advocated; that "every man owes some of his time to the upbuilding of the profession to which he belongs."

And in no wise is this more true than in the conduct and support of our Indigent Defense Panel which serves in the Federal Courts where, as all of us know, there is no such thing as a Public Defender's Office.

Mr. Harry Hupp deserves special commendation from us all for his conscientious efforts as Chairman in successfully organizing and directing the functions of this committee. He reports that some 250 of our members who serve on the committee devote 5000 man hours a year to this program, with no reward other than the satisfaction of having rendered a vital public service in keeping with the great responsibilities of our profession.

This—about "no reward"—isn't quite accurate in the light of two recent events connected with this program.

There are three young members of our Association who undoubtedly feel their efforts have been worthwhile, for they have just achieved resounding legal victories despite what most lawyers would consider insuperable obstacles.

One involves the upsetting of the "silver platter" doctrine whereby state officers, barred from using illegally obtained evidence in their own jurisdictions, were able to hand it over to federal prosecutors who could use it to convict even though it was inadmissible in the state courts.

Jose T. Rios, currently serving a 20-year term in McNeill Island for possession of heroin, had been acquitted in a state court because the evidence had been obtained illegally. Under the "silver platter" doctrine stemming from a 1914 Supreme Court decision, federal officers were provided with the rejected evidence, and Rios found himself a defendant in Federal Court.

At this point, Mr. Harvey M. Grossman took on Rios' case, the latter being destitute. Grossman argued that to try Rios on the same facts would involve double jeopardy, but Rios was found guilty and sentenced to prison —20 years for a first offender.

Grossman took the case through the courts to the highest tribunal. In a history-making decision last June 27, the Supreme Court, by a 5-4 decision,

in effect overturned the "silver platter" doctrine and sent the case back to the U. S. District Court in Los Angeles for further hearings.

Mr. Chief Justice Warren took occasion to thank Grossman for his diligent handling of the case and his public service.

Grossman, like all the other panelists, received no pay for his three-year fight for Rios. He was reimbursed for his round-trip plane fare to Washington, but hotel bills, meals, telegrams, secretarial help—all came out of his and his associates' pockets.

The other milestone set by members of our Association is the achievement of Stephen Reinhardt and Herbert Bernhard in the Leonard Saldana dope-selling case. This also involved double jeopardy and has been pushed through the courts to the point where the Supreme Court has accepted a writ of certiorari – the odds against which are about 40 to 1. Briefs are now being prepared and the case will be argued by our young panelists sometime between October and next June.

Neither lawyer has received a penny for the estimated 750 man-hours of skilled legal service expended in behalf of a total stranger, an admitted narcotics peddler, a man without funds or prestige. So far, Saldana has been the beneficiary of something like $26,000 in free legal counsel, briefs, court costs, and incidental expenses.

Like all members of the Los Angeles County Bar Association who serve on the Indigent Defense Panel, Reinhardt and Bernhard are actuated by the steadfast determination that every defendant is entitled to legal counsel. And those who have served in this capacity would assure you, I am certain, that there is great satisfaction in rendering a public service, in keeping with the great public responsibilities of our profession.

Every Monday a panel of five lawyers reports to the criminal division of the Federal Court for assignment, if their services are needed, to cases in which the defendants are unable to pay any fee whatsoever. The makeup of the panel is changing constantly, so that many members participate in this altruistic service in the course of a year.

Those who have not participated in this vital phase of our membership activity program and who would be interested in learning the details of what is required may obtain the information from Mr. Harry L. Hupp, chairman of the committee, at MAdison 6-0671.

FRONT COVER

HEART OF THE BUSINESS AND SHOPPING CENTER OF LOS ANGELES, 1885

Looking north on Spring Street, from First Street; tower in the distance is on the Baker Block.

Why the Connally Reservation Must Be Maintained

By JOSEPH L. CALL
Judge of the Superior Court, County of Los Angeles, State of California

ON JUNE 26, 1945, the United Nations Charter was duly engrossed and executed. Under Chapter XIV of the Charter there was established an "International Court of Justice" which was to operate solely *in accordance with* the "Statute of the International Court of Justice," annexed to the Charter and duly made a part thereof. (Charter, Chap. XIV, Art. 92.) Further, under the terms of the United Nations Charter, all members of the United Nations are ipso facto parties to this Statute. (Charter, Chap. XIV, Art. 93, Subd. 1.)

Jurisdiction

Article 36, Section 1 of the Statute provides that the jurisdiction of the Court comprises:

(a) All cases which the parties refer to it;

(b) All matters specially provided for in the Charter of the United Nations, or

(c) In treaties and conventions in force.

While all member states of the United Nations are "ipso facto parties to the Statute," they are *not* subject to any compulsory jurisdiction of the Court unless they voluntarily submit to compulsory jurisdiction. (Statute, Chap. II, Art. 36, Subd. 2.) Further analyzing said subdivision, it is to be seen that this voluntary acceptance of compulsory jurisdiction is accomplished as follows:

"The States parties to the present Statute *may* at any time declare that they recognize as compulsory ipso facto and without regard to special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

(a) The interpretation of a treaty;

(b) Any question of international law;

(c) The existence of any fact which, if established, would constitute a breach of an international obligation;

(d) The nature or extent of the reparation to be made for the breach of an international obligation."

(Writer's emphasis.)

Examining the following subdivision 3, it therein appears that said voluntary declarations of recognition of

EDITOR'S NOTE

In the April, 1960, issue of the BULLETIN *Carl Q. Christol in his article, "The United States and the International Court of Justice" presented the view that the Connally amendment should be abolished. Judge Call, who has appeared before various U. S. Senate and Bar committees in support of the Connally amendment, now presents the other side of the case. This issue which is currently being debated by the American Bar Association (See 46 A.B.A.J. 726 (July 1960)) deserves the attention of all members of the Bar.*

compulsory jurisdiction of the Court may:

A. Be made unconditionally;
B. Or on condition of reciprocity on the part of several or certain States;
C. Be for a certain time.

And it should be further pointed out that under Section 5 of the same article such declarations as had heretofore been made by States with respect to the "Permanent Court of International Justice" under Article 36 *thereof* (not to be confused with the present Article 36), are to remain in full force and effect as between the parties to the present Statute, and shall be deemed to be acceptances of the compulsory jurisdiction of the "International Court of Justice" for the period which they still have to run and in accordance with *their* terms.

Further, and of great significance, is the fact that under Subd. 6 of the same Article it is provided that in the event of a dispute as to whether the Court has jurisdiction of a certain subject or matter *that the matter of jurisdiction shall be settled by the decision of the Court itself.*

With further relation to subdivision 6, emphasis should be directed to the vital fact that neither the United Nations Charter nor Statute contemplates any kind of jurisdiction with respect to internal or domestic affairs of the several States. This is written into the Charter in Chapter 1, Article 2, Subsection 7 thereof, which reads as follows:

"Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State, or which require the members to submit such matters to settlement under the present Charter; . . ."

Placing full reliance on such assurances and principles, the United Nations Charter was ratified by the United States Senate with virtually no polemic, and with only two dissenting votes, it being the supposition of the public and the United States Senate that an international interstate organization had been underwritten embolden with the possibilities of international amity, concord and friendship under the supposition and anticipation that hostility, discord and bitterness could be reasoned, analyzed and considered peacefully in accordance with the Articles of the Charter, and under the doctrine of federalism, national sovereignty and self-determination of the people in regard to their own domestic affairs.

While the United Nations Charter was executed June 26, 1945, and the consent of the Senate given June 28, 1945, it should be strongly emphasized

that it was not until August 3, 1946, that the United States declaration accepting compulsory jurisdiction of the World Court, as provided in Article 36, Subd. 2, of the World Court Statute, was adopted by the Senate. The long intervening span of some thirteen months between the date of ratification and approval by the United States Senate of the Charter and the ratification by the Senate of the final form of the declaration of acceptance, denotes strong apprehension with respect to the actual form of acceptance and the obligations entailed. The facts in that respect are important to consider. In November of 1945 Senator Morse attempted to secure the passage of a declaration of acceptance of compulsory jurisdiction of the World Court. (Senate Resolution 160.) However, there was an indisposition to embrace therein a declaration as to the jurisdiction of the World Court over the United States. Upon it appearing manifest that no material sustenance could be acquired for the approval of this Resolution, Senator Morse thereafter introduced Senate Resolution 196, and this Resolution was subsequently referred to the Foreign Relations Committee of the Senate. It stood there in a state of pendency until July 25, 1956, when the Committee made an approving report on it to the Senate. The Morse Resolution, thus sanctioned and recommended by the Committee, respecting United States control of domestic affairs and sovereignty, reads as follows:

"• • • •

"Provided, That such declaration should not apply to –

"• • • •

"b. Disputes with regard to matters which are essentially within the domestic jurisdiction of the United States.

"• • • •"

However, there was great dissension in the Senate with respect to the approval or disapproval of said Resolution 196, there being great anxiety and mistrust that this Resolution, which embraced unchained compulsory jurisdiction of the United States by the World Court, would greatly imperil the constitutional principles of the United States, and the sovereignty of this country itself, the World Court Statute itself providing:

"In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court." (Statute – Chapter 2 – Art. 36 – Subd. 6.)

As a net result of all of the study and discussions in the Senate, there was finally written into the Morse Resolution the pronouncement of limitation prepared by Senator Connally, which provided that in the approval by the United States of the jurisdiction of the World Court, this jurisdiction "shall not apply to disputes with regard to matters which were essentially within the jurisdiction of the United States, *as determined by the United States.*"

The controversy at the present time is with respect to the retention, modification or elimination of the Connally Reservation, and concerns only the last six words, as above emphasized.

It is to be noted, however, that this modifying language of Senator Connally actually in nowise changes the *true intent of the Charter itself,* because as we look back on Chapter 1, Article 2, Subsection 7 of the Charter (supra p. 4), we find that it specifically states that nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the jurisdiction of any State, or shall

require the members to submit such matters to settlement under the present Charter. Thereafter, the Connally Amendment was adopted by the Senate on August 3, 1946, by an affirmative vote of 51 to 12.

The Question

The question that will be determined by the maintenance or rejection of the qualifying limitations of the Connally Reservation is this:

Will our form of government, as established and comprehended under the United States Constitution, with its principles, provisions, limitations of power and safeguards and rights of person and property be maintained, or will they be negated and vitiated on behalf of world government?

It has been and is apparent, as the facts will show, that since the adoption of the United Nations Charter by the United States, there has been an immutable and relentless effort by those who favor world government, whether marshalled as World Federalists, World Parliamentarians, or otherwise, to initiate and advance in one form or another through the United Nations, its commissions or agencies, a transmutation of power to world government and a consequent subordination of the sovereignty of the United States. This is evident from the declarations, discussions and proceedings within the United Nations itself.

Those who advocate the revocation of the Connally Reservation constantly overlook these facts. They fail to comprehend the constant programs that are being incessantly advanced by the United Nations and its commissions through the medium of treaty law which, when adopted in treaty form, not only becomes the supreme law of the United States (United States Constitution, Article 6, Subdivision 2), but becomes international in character through the adoption of the treaty. Illustrations of this are to be found in the work of the Commission on Human Rights, a subsidiary of the Economic and Social Council, UNESCO, the GATT, the ITU, the FAO, the WHO, and a multitude of others. These agencies are all engaged and have been engaged in the creation of treaties designed to control and supervise many of our essential domestic concerns, relations and private rights. In addition to the provisions of the Court Statute, Chapter 2, Article 36, Subdivision 6 (supra p. 3), giving the World Court complete power to determine its own jurisdiction, consideration should never be lost of the fact that the World Court is additionally given power under Subdivision 2 thereof (supra) over all disputes concerning the interpretation of treaties; and that the treaties and covenants that have been promulgated and proposed by the various committees and agencies of the United Nations, invariably contain provisions which regulate domestic affairs in a manner inconsistent with our fundamental constitutional provisions and guarantees. Thus there is no way in which the United States can avoid having its domestic issues, basic constitutional rights, principles and guarantees, adjudicated by the World Court other than by the restrictive provisions of the Connally Reservation.

The ambuscade in the unrestrained submission to the jurisdiction of the World Court is that the United Nations *may intervene in matters within the domestic jurisdiction of the member States.* This possibility or even probability appears from the bold statement of Mr. John P. Humphrey, the first Director of the Commission on Human Rights, in his article in

(Continued on page 372)

Judicial Transformation in California—1837-1851

By Michael Mathes

Mr. Mathes is a native Californian. He graduated from Loyola University of Los Angeles in 1957 with a B.S. in History and is presently engaged in studies for the Ph.D. degree in the History of the American West and Latin America at the University of Southern California. The author has done extensive research in history and anthropology in Mexico.

Mexican Background

» » THE BASIC FORMATION of the judiciary in Mexican California was based upon the Decrees of March 20, and May 23, 1837.[1] In the former, Section VI defined the duties of Alcaldes as being executory in the main, with judicial authority only in cases of disturbing the peace.[2] Alcaldes were to be elected in the provincial capitol, and in port towns exceeding 4000 in population, or in interior towns with a population of 8000 unless specified otherwise by the Governor and Legislature.

Alcaldes, along with Regidores and Sindicos were members of a town council, Ayuntamiento, provided for under Article V. They were not to exceed six in number, and the number was to be set by the Legislature. Reelection of Alcaldes was permitted, however, their term of office extended for only one year.

The actual judiciary was established by Section VII, providing for the creation, by the Governor and Legislature, of Justices of the Peace whenever and wherever deemed necessary.[3]

The Decree of May 23, in Section II, provided for the appointment of Judges for the Courts of First Instance by the Governor and the Legislature. In towns where more than one judge sat, jurisdiction over civil and criminal matters was to be divided. A Clerk, Recorder, and Executive Officer were also provided for.[4]

Additional provisions for Alcaldes and Justices of the Peace were made in Section III, extending their power to that of hearing all verbal processes, and serving as conciliators in areas of over 1000 population. Furthermore, urgent matters, or, upon commission from the Judge of First Instance, all matters could be heard before these officers.[5]

[1] 1 Cal. 559-60. The Spanish Cortes, in 1812, provided for an Alcalde, along with a Regidor and Sindico, in each area of over 50 inhabitants, and gave the Alcalde the *pro tem* power of Justice of the Peace when the Judge of the Court of First Instance was absent.
The name, Alcalde, is derived from the Moorish, Al-Caid, meaning "headman."

[2] 1 Cal. 560-565. During this period, the only true magistrates were in Monterey.

[3] *Ibid.* See Section VI, Articles 2, 5, and 7; Section V, Articles 1, 3, 4, 9, 16, 29, and 33; and Section VII, Articles 1, 3, and 4.

[4] 1 Cal. 566-9. See Section II, articles 1-3.

[5] 1 Cal. 569-71. See Section III, articles 1-3 and 14.

The Court of Second Instance was the appeal tribunal, and the judges of this court, sitting *en banc*, made up the Court of Third Instance. When the latter was sitting, a judge from the Court of First Instance was appointed, *pro tem*, to the Court of Second Instance and the First Alcalde was appointed, *pro tem*, to the Court of First Instance.[6]

Notwithstanding the above Decrees, judicial functions did not follow the prescribed patterns. In reality, the Governor served as the final Appellate Court, and Alcaldes were often chosen extemporaneously for a single case. Under these latter circumstances, the Alcalde generally made his own law, and if his decision was unacceptable to the populace, a pronouncement was made and a new Alcalde appointed. In many areas, Justices of the Peace assumed the title of Alcalde or Judge of the Court of First Instance due to the increased prestige thus gained. Under the Micheltorena administration, the only judge outside of Monterey was John Sutter, appointed as Judge of the District of Sacramento and Nueva Helvetia.[7]

United States Military Occupation

With the precedent of the Mexican Judicial System and the invasion of California by the United States, conflicts of laws and systems arose. On July 7, 1846, Commodore Robert F. Stockton proclaimed the adoption of the Constitution of the United States and the guarantees of civil liberties. The Governorship of Stockton was short lived and without incidence, for his proclamation was without effect.

With the arrival of General Stephen W. Kearney in California, as ranking officer, he became Civil Governor on February 12, 1847.[8] Under the military government, the framework of the Mexican Judiciary was retained. John Brown was appointed as Alcalde and Washington Bartlett was given the position of Magistrate and Justice of the District of San Francisco under Kearney.[9] Problems met by these first judges were a continuation of the earlier difficulties of determining the law, compounded with the objections by the settlers to Hispanic legal principles and the introduction of the American Common Law.[10]

Edwin Bryant, the successor of Bartlett, was soon replaced, under the Governorship of Colonel Richard B. Mason,[11] by George Hyde and Reverend Leavenworth was appointed Second Alcalde. Under Hyde, the Town Council of San Francisco was formed on July 31, 1847.[12] Although a Magistrate, Hyde, as his Mexican predecessors, preferred the title of Alcalde, and the Town Council was highly reminiscent of the Ayuntamiento.

With the completion of the military occupation, Alcaldes were elected in all settlements, however, informal systems of justice continued. In the gold fields, "Miner's Courts" were formed for both civil and criminal matters, with authorities being derived from Hispanic, Anglo-American, and Scriptural sources. Under many circumstances, cases were tried before juries

[6] 1 Cal. 573.
[7] 1 Cal. 574.
[8] Kearney was de jure governor from the time of his entry on December 2, 1846, however, conflict with Stockton and Fremont delayed his taking office.
[9] 1 Cal. 583. The Judge of the Court of First Instance was authorized to make land grants.
[10] Kearney appointed Reverend Walter Colton as Admiralty Court Judge on March 24, 1847 to determine the case of the British Schooner "William" as a prize of war. Noel C. Stevenson, "The Glorious Uncertainty of the Law," *Journal of the State Bar of California*, XVIII (Sept.-Oct. 1953), 376. L. W. Hastings, in the "California Star" of February 20, 1847, advertised that he had obtained a law library. However, few lawyers had books, and the Anglo-Americans were not versed in Civil Law.
[11] Mason succeeded Kearney on May 31, 1847.
[12] 1 Cal. 584. Authorized by Mason, July 15, commended on August 13.

alone. Although many of these makeshift courts dealt equitably with the parties, abuses and discrepancies were more commonplace.[13]

In the South, law continued much as it had prior to the occupation, with the Civil Codes prevailing as authority. The Anglo-American settlements, however, found that "speedy justice was more desirable than exact justice, when labor was valued at an ounce of gold per day,"[14] and there was little appeal because of the relative absence of trial records. Also, in the North, criminal justice was of poor quality. No jails were available, and sheriffs and guards were usually voluntary.

The collection of fees for town lots by Alcaldes, and fees received by Judges of the First Instance, placed the courts of the occupation period in an even more deplorable state.

This was the condition of the judicial administration in California on March 16, 1848, the date of the ratification of the Treaty of Guadalupe Hidalgo. Under Article VIII of the Treaty, Mexican citizens were free to remain and elect citizenship within one year, further, all property rights were to be respected. Article IX guaranteed equal rights to all Mexican citizens who elected to remain.[15] Legally, this Treaty signified the termination of hostilities, and, therefore, should have signalled the removal of the military occupation. Because of delays in Congress, however, Mason continued as Governor.

On April 13, 1849, Brigadier General Bennett Riley succeeded Mason as Military Governor. De jure, Riley had no power since there was no law governing the Californians, and his regime has been termed a "necessary and unavoidable usurpation."[16] Notwithstanding this situation, Riley immediately took steps to correct the corruption and inefficiency in the judicial system.

On April 9, General Pereifer Smith had complained, as had many others, of the inability of enforcement of the law due to the lack of printed statutes.[17] To rectify this situation, Riley ordered the printing of a manual of Mexican laws in English. This manual was of some use when not repugnant to the United States Constitution. However, most court decisions were based upon Common Law.

On June 3, 1849, Riley, in continuation of his policy of reform, called for the election of Judges of First Instance, Prefects, and Judges of Second Instance in areas where the Court of First Instance was already functioning.[18] At this time also, in preparation for coming Statehood, Riley called a Constitutional Convention with thirty-seven delegates to convene in Colton Hall, Monterey, on September 1, 1849.[19]

The Constitution of 1849

In Colton Hall, on September 3, forty-eight delegates prepared to draft the Constitution of the State of California. Of these forty-eight, fourteen

---

[13] 1 *West's California Codes*, 4. Precedents set by the "Miner's Courts" were admissible under the Civil Practice Act of 1851.

[14] 1 Cal. 578.

[15] 9 *U.S. Stat. at L.* (1849), 922 *et seq.* Treaty of Peace, Friendship, Limits and Settlement with the Republic of Mexico, dated at Guadalupe Hidalgo, February 2, 1848, exchanged at Querétero, May 30, 1848, and proclaimed by the United States, July 4, 1848.

[16] 1 Cal. 576.

[17] Stevenson, *op. cit.*, p. 373.

[18] 1 *West's California Codes*. 13. See 1 Cal. 586. On March 5, the fifteen-member "San Francisco Legislative Assembly" met under Francis J. Lippit and, appointing Myron Norton as Justice of the Peace, forcibly seized the court records from Leavenworth. The Assembly disbanded after Riley threatened to close the port and move the Customs House to Benicia. In the August elections, John W. Geary was elected First Alcalde of San Francisco, and Frank Turk was elected Second Alcalde. See also, 1 Cal. 587. Due to the influx of settlers and increases in litigation, the Courts of First Instance in San Francisco were operating from early morning into the night.

[19] *Ibid.* Seventy-three delegates were permitted.

were attorneys and judges, and seven were native Californians.[20] After six weeks of debate, on October 12, the Constitution, with thirteen articles and 137 sections, was signed by Riley as Governor, H. W. Halleck as Secretary of State, Robert Semple as President of the Convention, and the forty-eight delegates.[21] The Constitution was a relatively simple document with sixty-six of the sections based upon the Iowa Constitution, nineteen sections based upon the New York Constitution, and the remaining sections based on the Constitutions of Louisiana, Texas, Mississippi, Wisconsin, Michigan, and the United States.[22]

Article I of the Constitution provided a Declaration of Rights, with Section 3 providing for trial by jury, Section 5, for writ of habeas corpus, Sections 6 and 7 for bail and prevention of unreasonable detainment, and Section 8, for due process. The uniformity of general laws was provided for in Section 11, and unreasonable search and seizure was prevented in Section 19. Foreign residents were given equal rights under Section 17.[23]

Succeeding articles provided for the Right of Suffrage,[24] Distribution of Powers,[25] and the duties of the Legislative Department[26] and the Executive Department.[27] In Article VI, the powers and duties of the Judicial Department were defined in eighteen sections.[28]

The structure of the Courts was set up in Section 1. There was to be a Supreme Court, District Court, County Court, Justice Court, and any Municipal or Inferior Court provided for by the Legislature.[29] The Supreme Court was to be composed of one Chief Justice and two Associate Justices, with two Justices necessary for a quorum.[30] The Justices were to be elected for six-year terms, with two years as the term for sitting in the capacity of Chief.[31] Jurisdiction was in civil matters over $200.00, writs of habeas corpus, and in matters relating to taxes or fines.[32]

For the formation of District Courts, the Legislature was to divide the State into Judicial Districts to be presided over by a District Judge elected for six years.[33] The District Court had jurisdiction of civil matters in law and equity involving $200.00, probate, and criminal matters.[34] In the Districts,

[20] *Ibid.*
[21] 3 *West's California Codes.* 725.
[22] 1 *West's California Codes.* 13.
[23] 3 *West's California Codes.* 700-01.
[24] Article II.
[25] Article III.
[26] Article IV.
[27] Article V.
[28] Modified and amended in full, 1862.
[29] 3 *West's California Codes.* 711. The Courts of Appeal replaced the Courts of Second Instance, the County Court replaced the Courts of First Instance, Municipal Courts replaced Alcaldes, and Justice Courts remained similar in function.
[30] Section 2.
[31] Section 3.
[32] Section 4.
[33] Section 5.
[34] Section 6.

Clerks, Peace Officers, and District Attorney were to be elected,[35] and Courts of Sessions, to hear criminal cases, were to be composed of a County Judge and two Justices of the Peace.[36] County Courts had no jurisdiction in civil matters other than on appeal from the Justice Court.[37]

The remaining sections provided for the general functioning of the Courts. Terms were to be set by law,[38] laws and reports of cases were to be published,[39] and tribunals of conciliation without final judgment were to be held.[40] The Legislature was to determine the number of Justices of the Peace,[41] Judges were to be salaried[42] with only Justices of the Peace receiving fees,[43] and all Judges were prohibited from holding other offices concurrent with their judgeship.[44] Actions brought by the State were to proceed under the name of the People of the State of California,[45] and no fact, other than evidence and the law, was to be placed before the jury.[46]

Article VII provided for a Militia, VIII, for State Debts, IX, for Education, and X, for the Mode of Amending ad Revising the Constitution. Promiscuous Provisions, Article XI, placed the State Capital at San Jose,[47] prohibited office holding and suffrage of those involved in a duel,[48] and ordered the publication of laws in Spanish and English.[49]

The Constitution was Ratified on Tuesday, November 13, and Proclaimed December 20, 1849.

The Formation of Courts

Following the elections of November 13, the Legislature convened on December 15, and, five days later, Peter H. Burnett succeeded General Bennett Riley as civil governor.[50] On January 1, 1850, the judges took office. S.C. Hastings was Chief Justice, and H.A. Lyons and N. Bennett, Associate Justices. The Legislature divided California into nine Judicial Districts to which O.S. Wetherby, H.A. Tefft, J.A. Watson, L. Parsons, C.M. Creanor, J.S. Thomas, R. Hopkins, W.R. Turner, and W.S. Sherwood were, respectively, elected.[51]

The Committee on the Judiciary, appointed by the Legislature, returned their Report on the Civil and Common Law, on February 27. The results of this report were overwhelmingly in favor of adoption of the American Common Law system.[52] These findings brought about the passage of Chapter 95 of the Statutes of 1850, which stated that the "Common Law of England so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of the State of California, shall be the rule of decision in the Courts of this State."[53]

On February 13, 1850, the Petition for Admission of the State of California was placed before the United States Congress, and the Legislature adjourned on April 22.

With the formalization of law, the old problems of the Spanish, Mexican,

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[35]Section 7.
[36]Section 8.
[37]Section 9.
[38]Section 10.
[39]Section 12.
[40]Section 13.
[41]Section 14.
[42]Section 15.
[43]Section 11.
[44]Section 16.
[45]Section 18.
[46]Section 17.
[47]Section 1. This was unless changed by a two-thirds vote of the Legislature.
[48]Section 2.
[49]Section 21.
[50]*West's California Codes.* 29. Twenty-five counties were formed.
[51]1 Cal. i.
[52]1 Cal. 588-604. The Committee reported that only eighteen out of over 100 attorneys in San Francisco favored the Civil Law; that of the thirty States, twenty-nine were under Common Law, the only exception being Louisiana; and that the problem of Civil Law books in English would be almost insurmountable.
[53]*Cal. Stats.* (1850), Ch. 95.

and Military Occupation periods remained. Lawyers and judges still lacked the printed word[54] and, along with using the old formula of Civil, Common, and Scriptural law, were forced to rely upon clippings from newspapers, pasted in scrapbooks, as their authority.[55]

The Act for Admission of the State of California, on September 9, 1850,[56] led to the Extension of United States Laws and Judicial System Act of September 28. Under this Act, two Districts divided by parallel 37° N. Latitude were formed, with one judge in each District. In the Northern District, court was to be held in San Jose, San Francisco, Sacramento, and Stockton, and, in the Southern District, at Monterey and Los Angeles. A Marshal and United States Attorney were to be appointed for each District, and District Judges were authorized to act as Circuit Judges in civil matters.[57] Ogden Hoffman was appointed to the Northern District on February 27, 1851, and James M. Jones was appointed to the Southern District on December 26, 1850.[58]

With the organization of courts thus completed, California was prepared to deal justly with those who sought relief under her laws.

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[54] *Ibid.*, Chapters 2, 26, 32. A State Printer was provided for and a Joint Resolution called for the immediate printing of certain laws; nevertheless, a conflict between the Governor and the Legislature led to a delay in selecting the State Printer.

[55] Stevenson, *op. cit.*, p. 378-9.

[56] 9 *U.S. Stats. at L.* (1851), 521.

[57] 9 *U.S. Stats. at L.* (1851), 521. See 12 *U.S. Stats. at L.* (1856), 794. The California Circuit was not created until March 2, 1855.

[58] 1 *Federal Cases.* xvi, xviii.

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Thin Corporations: The Ratio Test is not Enough

By MARTIN H. WEBSTER

Member of the firm of Webster and Abbott and member and former Chairman (1958-59) of the Los Angeles County Bar Association Committee on Taxation

» » THE REASONS for incorporators wishing to finance their corporations only partially with equity investment and the balance with loans are quite apparent. Among the outstanding are: (1) there is less at stake if the enterprise should fail, for the loans (assuming no subordination) would participate *pari passu* with the advances of non-stockholding creditors; and (2) if the enterprise should be successful, the loans would provide a means of recapturing some of the original stake without any tax at the recipient level.

Through the years, a rule of thumb developed among practitioners that if the ratio of debt to equity was reasonable, no problems would be encountered with the Treasury Department in supporting the claim that the alleged debt was true debt. This approach was fortified by Treasury Department acquiescences in *Ruspyn Corporation*, 18 T. C. 769 (1952), acq. 1952–2 C.B. 3, where the ratio of debt to equity was 3½ to 1, and in *Brown*, 27 T.C. 27 (1956), acq. 1957 –2 C.B. 4, where the ratio of debt to equity was 2.2 to 1.

This rule of thumb was never entirely sound, for other factors than ratio generally entered into the decisions.

Recent practice of the Service, and recent decisions of the courts, combine to emphasize that reliance upon a reasonable ratio constitutes even less assurance than ever to incorporators that their debt position will be recognized.

The latest case illustrative of this situation is *Brake & Electric Sales Corp.* v. *U.S.*, a District Court decision in Massachusetts (60–2 U.S.T.C. Par. 9594). There a sole proprietor invested $20,000 in cash in a new corporation in exchange for all its stock. Shortly thereafter, but as part of the original transaction, he sold his business having a book net worth of $90,000 to the corporation in exchange for $90,000 of 5 year interest bearing notes. The ratio of debt to equity was thus 4½ to 1. However, the court conceded ". . . there does not appear to be such a grossly disproportionate ratio of debt to capital as would require or, taken alone, justify a finding that the transaction here must have been a capital investment rather than a loan." The court further noted that the business transferred had a going concern value, because of its valuable franchises and its clear good will, which would have created an even more favorable debt to equity ratio.

In fact the testimony of the transferor of the business was to the effect that this going concern value was $457,000; and while the court refused to accept this testimony as fact, it did agree the value was substantial. Even if the value were one-half of that claimed, the debt to equity ratio would have been 1 to 3.8—certainly a ratio which should have been very safe indeed.

The court held otherwise, refused to recognize any debt, and gave the following as its reasons: (1) the assets sold were essential to the business (*cf. Brown*, 27 T. C. 27); (2) the holder of the notes testified he would not have enforced them if this would have necessitated corporate borrowing from third parties (*cf.* the contrary result in *Wilshire & Western Sandwiches, Inc.*, v. *Commissioner*, 175 F.2d 718 (9th Cir. 1949), on similar testimony); (3) the transferor through his complete control of the corporation could have declared a non-deductible dividend but instead sought the tax benefit of purportedly deductible interest; and (4) the due dates of the notes were regularly extended.

The first and second reasons are typical of these situations, and if relied upon by other courts would make improbable any characterization other than that of investment. The third reason is patently *a posteriori*. Thus only the fourth reason has some merit to it, since consistent extensions constitute some evidence of the absence of an initial intention to lend or of an intention to retain a creditor position if initially present.

The Tax Reminder for this month then: do not rely upon ratio of debt to equity alone to save your clients' thin corporations. As the best solution, try for third-party loans. But failing this, insist upon as many true loan features as possible, and as scrupulous attention by the stockholder-lender to collection of his purported debt and its interest as might be expected from the most hard-nosed banker. Above all, be sure to tell the client of his risks *before* he enters into the transaction.

Persons Who Served on the Federal Courts Criminal Indigent Defense Panel During August, 1960

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ATTORNEYS: *Gentlemen of the Law* by M. Birks (Stevens, 304p.) is a popular history of the lawyer from 1200 A.D. told against the background of English society. The author, a clerk in Chancery, attempts to show what kind of people became lawyers and the kinds of lives they led in the social pattern. There are bibliographies and contemporary illustrations, but the book is generally undocumented.

BIOGRAPHY: *Felix Frankfurter, Scholar on the Bench* by H. S. Thomas (Johns Hopkins, 381p.) discusses the intellectual background and reasoning affecting the opinions of the justice who followed Holmes and Cardozo in the chair termed the "Scholar's Seat" on the Supreme Court.

CORPORATIONS: *The Corporation in Modern Society* (Harvard University Press, 335p.) is a series of essays edited by Edward S. Mason on various aspects of the changing role of the corporation in modern society. A. Chayes, Professor of Law at Harvard writes on the rule of law. Dean Rostow of Yale Law School discusses the responsibility of corporate management. Economic freedom, power, unions, technology and financing are other subjects treated. Articles on corporations in Great Britain and Russia complete the volume.

COURT RULES: Deering's California Codes: *Rules Annotated, with Forms* (Bancroft-Whitney, 1069p.) contains state court rules, State Bar rules, annotated with case citations and other references. There are parallel tables which trace the rules back to the Practice Act of 1851 and earlier sets of rules. Federal court rules are included unannotated.

CRIME: *Mostly Murder* by Sir Sydney Smith (Harrap, 318p.) recounts the medico-legal adventures of a notable British pathologist. He participated in the solution of the Buck Ruxton case and many others. *Crime Documentary No. 1, Guenther Podola* by Rupert Furneaux (Stevens, 319p.) records a recent British case where the unusual plea of unfitness to plead because of loss of memory was entered.

FOREIGN LAW: *Business Associations Under French Law* by E. M. Church (Fallon, 589p.) is a detailed consideration of French corporate law to meet the needs of lawyers who are involved in problems of commercial contact with a civil law country. There are citations to French court cases, statutes and a glossary of terms.

INTERNATIONAL LAW: *The Saar Conflict, 1945-1955* by J. Freymond (Stevens, 395p.) represents the first of a series of studies in international

conflict, tracing, in time, the development of international tensions and their resolution with an analysis of the factors involved.

INTOXICATION: *Chemical Tests for Intoxication Manual,* edited by the American Medical Association (103p.) contains sections on the nature and action of alcohol, testing procedures and the legal aspects, with suggestions for organizing a local program.

LABOR LAW: *Labor-Management Arbitration Manual* by Beaty (Eppler, 186p.) presents a guide to industrial arbitration for the firm manager or the labor union representative who needs a digest of the techniques and procedures followed in arbitration. The definition, history and costs are discussed. Copies of the rules and a list of state statutes are included.

LEGAL POETRY: *Justice and the Law: An Anthology of American Legal Poetry and Verse,* compiled by P. E. Jackson (Michie, 620p.) is divided into twenty-five sections covering justice, the law, the lawyer, courts, judges and the divisions of the law. The poetry and excerpts from poems are written by judges, lawyers, and legally inspired such as Emerson, Dickinson and Masters. Judge Swain contributes his poem "The Bounds of Knowledge."

MALPRACTICE: *Trial of Medical Malpractice Cases* by David W. Louisell and Harold Williams (Matthew Bender, 1022p.) combines the talents of a law professor and a doctor in approaching the problems of the malpractice suit. It is aimed primarily at the lawyer and judge involved. The medical aspects and methods of preparing and handling cases for plaintiff and defendant are covered. There are sections on the statutes of limitation, res ipsa loquitur, damages and insurance. Appendices give sources of additional information and a list of malpractice cases classified by injury. A table of cases and an index complete the volume.

NARCOTICS: *The Informer in Law Enforcement* by Harney and Cross (Thomas, 83p.) is a brief book aimed at contributing to the understanding of the public on the necessity of the informer. How and where to find, how to handle and the relations to the law are treated. Few citations are included.

TAXATION: The Tax Institute's 1959 Symposium, *Taxation and Operations Abroad* (308p.) is divided into four parts: management decisions and form of business organization, economic problems, foreign taxes, and major problems of national policy. Most of the speakers were lawyers and economists. Hale Boggs contributes a talk on tax incentives for overseas investments.

TRIALS: *Sacco-Vanzetti: The Murder and the Myth* by Robert H. Montgomery (Devin-Adair, 370p.) a practicing Massachusetts lawyer, examines the record of the trial and concludes that the pair were legally convicted and sentenced after a fair, unprejudiced trial.

MISCELLANEOUS: The *Draft Report* of Special Master S. H. Rifkind in Arizona v. California, May 5, 1960, 387p. has been released. *The Spirit of Liberty* by Learned Hand, 3d edition by Irving Dillard (Knopf, 311p.) contains 2 addresses and 3 papers not found in earlier editions. Averbach's *Handling Accident Cases,* v. 3, covers medical malpractice and products liability (Lawyers Cooperative, 716p.)

L.A. County Bench and Bar Well Represented at ABA Convention

» » THE LOS ANGELES County Bench and Bar was well represented among the speakers at the meeting of the American Bar Association in Washington, D. C., August 29-September 2, 1960. Of those on the national scene, Commissioner of Internal Revenue, Dana Latham, addressed the National Conference of Bar Presidents. Superior Court Judge Roger A. Pfaff spoke on "Reconciliation" before the section on Family Law and District Attorney William B. McKesson presided at a panel on "Crime Portrayal in Public Media."

Los Angeles County Bar President Grant B. Cooper, and Past President Herman F. Selvin participated in a panel discussion of "Lawyers on Television Programs" before the National Conference of Bar Presidents, and Bradley Jones and Arthur B. Willis were panelists on the subject "Should Lawyers Incorporate?" before the same group. George E. Bodle and J. Stuart Neary presented their committee reports on "Legal Representation" before the section on Labor Relations Law. Richard F. C. Hayden spoke on "Electronic Data Retrieval" before the section on Bar Activities and J. Stanley Mullin discussed "Status of Proposals by State Department Concerning Administration by Foreign Consuls of American Located Estates Involving Foreign Nationals" before the section on Real Property, Probate and Trust Law. William F. McKenna Spoke to the meeting of the section on Corporation, Banking and Business Law on "The Conduct of a Hearing under the Administrative Procedure Act Where a Hearing is Required by Law" as part of a discussion on Federal Home Loan Bank Board regulation and supervision, and the Antitrust Law section heard Julian O. von Kalinowski discuss "Price Discrimination and Competitive Effects" in a symposium on the Robinson-Patman Act.

This account would not be complete without noting that the best known "lawyer" of all, Raymond Burr of Hollywood, the "Perry Mason" of the television series, also participated in the conference on "Law and Layman" before the section on Judicial Administration and was the principal speaker at the annual reception and banquet of the Judge Advocates Association, an ABA affiliate. His topic there was "Acting Like a Lawyer."

"The Annals of the American Academy of Political and Social Science," under date of January, 1948. Here are his words:

> "What the United Nations is trying to do is revolutionary in character. Human rights are largely a matter of relations between the State and the individuals, and therefore a matter which has been traditionally regarded as being within the domestic jurisdiction of the States. What is now being proposed is, in effect, the creation of some kind of supernational supervision of this relationship between the State and its citizens."

This same thought and practice is further illustrated and advocated by Mr. Moses Moskowitz, of the United Nations staff, who concludes (April, 1949, in 35 A.B.A.J. 285) that resolutions of its agencies or subjects of a United Nations Convention are no longer "a matter essentially within the jurisdiction of a member State." From this it is easy to see that any of the agencies, commissions or the United Nations itself may by its own fiat make a matter that is essentially domestic in character of international consequence, and thusly subject to the jurisdiction of the World Court. The only protection against this is the Connally Reservation. Here is the way Mr. Moskowitz advocates this proposition in the American Bar Association Journal:

> ". . . once a matter has become, in one way or another, the subject of regulation by the United Nations, be it by resolution of the General Assembly or by convention between member States at the instance of the United Nations, that subject ceases to be a matter being essentially within the domestic jurisdiction of the member States. As a matter of fact, *such a position represents the official view of the United Nations,* as well as of the member States that have voted in favor of the universal declaration of human rights. Hence, neither the declaration, nor the projected covenant, nor any agreement that may be reached in the future on the machinery of implementation of human rights, can in any way be considered as violative of the letter of spirit of Article 2 of the Charter." (Writer's emphasis.)

This official view of the United Nations and its agencies simply negates and nullifies all of the United Nations Charter provisions with respect to sovereignty of individual member States. These exactions are so broad and so unrestrained that the United Nations can by its own mandate transform all of our constitutional rights, principles and domestic laws into international matters, all under the jurisdiction of both the United Nations and the World Court. This again shows the absolute necessity of the United States maintaining the Connally Reservation.

While the ordinary citizen, upon reading such a statement, could justly conclude that such a proposition as advanced by Mr. Moskowitz would be at once repudiated by this government through its State Department, it is, however, almost unbelievable to find that on the contrary the United States State Department, under the guidance of Dean Acheson in Septem-

ber, 1950 (State Department Publication No. 3972) stated that, "There is now no longer any real difference between domestic and foreign affairs." With this statement by our own government, it is not hard to see that the World Court could and would very readily conclude that the United States no longer desires to retain and does concede jurisdiction of all domestic affairs upon the World Court. Certainly the Connally Reservation is needed to guard against such a situation as this, and to prevent any compulsory jurisdiction over our own domestic affairs.

Such public pronouncements as this by our State Department or other prominent officials carry tremendous import and are made contrary to their powers or rights, and contrary to the express provisions of the United States Constitution. They are made also in the face of the refusal of either major party to take a stand on these questions so that the voters of this country may have the right to express an opinion thereon. With respect to what is commonly called "foreign policy," that is, United Nations membership, financing of foreign powers, foreign relief, maintenance of American troops throughout the world, and kindred subjects, there is a complete bipartisan policy adopted by both major parties so that the American people can in no way express an opinion on these vast and important subjects. The last expression of public opinion on such matters was in 1920, when the issue was clearly joined as to whether or not this country would join the League of Nations, as advocated by Woodrow Wilson. To those who remember the issue as presented at that time and the public debates with respect to the same, it is not necessary to say that such foreign policy was rejected and

defeated by the vast majority of American citizens throughout the country.

President Truman, in denying the right of the American people to govern themselves with respect to foreign policy, states the situation in this fashion, in his November 20, 1951 speech to the National Women's Democratic Club:

"You remember what happened in 1920 when the people voted for Harding. They made a tremendous change in the course the United States was following. It meant that we turned our backs on the new born League of Nations. . . . I think most people now recognize that the country chose the wrong course in 1920. . . . Since I have been President, I have sought to steer a straight course of handling foreign policy matters on the sole basis of the national interest. The people I have chosen to fill the national positions concerned with foreign policy have been picked solely on merit, without regard to party labels. I want to keep it that way. *I want to keep our foreign policy out of domestic politics.*" (Writer's emphasis.)

What President Truman was telling the National Women's Democratic Club on November 20, 1951, was that because *in his opinion* the people voted wrong on foreign policy, that they should not vote on it at all any more, but simply leave the question of foreign policy to the President. And so under the terminology of *bipartisan foreign policy,* this is exactly what has happened.

It is being maintained by proponents for repeal or withdrawal of the

Connally Reservation that the World Court's compulsory jurisdiction is automatically limited by the provision of the Statute itself (Court Statute, Art. 36, Subd. 2). At the risk of repetition, such pertinent provisions indicated are as follows: (See also supra.)

(a) The interpretation of a treaty;

(b) Any question of international law;

(c) The existence of any fact which, if established, would constitute a breach of an international obligation;

(d) The nature or extent of the reparation to be made for the breach of an international obligation."

However, the conclusions arrived at by such proponents are in nowise justified upon the suppositions stated. Analyzing them, we notice first that there is no standard of law that is set up by which the members of the World Court are to determine what is or what is not a legal dispute. To literalize this further, it is but necessary to point out that the World Court is composed of fifteen judges, of which one each is from the following nations or nationalities: The United Arab Republic, Nationalist China, Poland, Greece, France, Mexico, Panama, Uruguay, Argentina, Norway, Pakistan, Soviet Russia, the United States, Great Britain and Australia.

Breaking this down further, it is to be noted that the three members of the Court from the United States, Great Britain and Australia, are the only judges from countries adopting and using "English common law." All of the other judges of the World Court are from countries in which various systems and standards of law and usage are followed, some at great variance with our standards of constitutional principles, particularly the basic doctrine that sovereignty vests in the people and that all government operates through a limited delegation of powers from the people to their officers.

With the qualified exception of England and Australia, an examination of the "constitutions" of the other countries shows that they are all founded in one fashion or another upon monarchy or dictatorship or upon a basis or a premise that can or does give rise to such form of government. Witness, for instance, the rise of Nasser to complete authority over Egypt, now with Syria the United Arab Republic; or the continual "re-election" of Chiang in Nationalist China, though their "Constitution" provides otherwise; or of totalitarianism in France, which admittedly is under the domination, power and control of General De Gaulle for an indefinite period of time; or Argentina, which has just finished with twelve years of totalitarian rule of Peron. As far as the communist countries of Poland and Soviet Russia are concerned, they stand on their own principles of Communism.

Consequently, it is obvious that some of these judges, no matter how sincere or impartial they may be, are not in any position to determine or set up a standard of law or procedure by which to adjudicate the consideration of legal disputes or our constitutional principles, or any other democracy's judicial precepts, for that matter.

This same reasoning precludes them from a fair or impartial adjudication of an international treaty, because it would be adjudicated according to the individual standards or principles of their own respective countries. For instance, more than one-fourth of our federal debt of $290,877,000,000 (as of

February 11, 1960) is due to budget deficits caused by foreign aid. Suppose the United States were to be sued in the World Court because it had decided to discontinue the giving of foreign relief and because the country suing was being injured in its economy. What is to prevent the World Court from exercising jurisdiction upon the ground that the action involves a legal dispute or obligation of international consequence?

The "interpretation of a treaty" in which the subject matter of the treaty involves domestic affairs of the United States, could be properly and readily adjudicated by the World Court, as could "any question of international law," and the same logic and reasoning holds true with respect to all of the other fields of jurisdiction of the World Court under the Court Statute, Article 2, *supra*.

In another way of reasoning, the question might very properly be asked: Inasmuch as many of the countries who have representation on the World Court are steeped in socialism and communism and do not recognize private property or private rights, how can it be expected that they could properly, honestly, or at all, adjudicate the rights and principles of another country which is based on a constitutional doctrine of sovereignty of the people, private property and a government operating only under express delegations of power? It is most apparent that the only thing that can protect the United States from such a problem is the Connally Reservation.

It is only proper that some comment should be made with respect to the recent study by the Special Committee of the Section of the International and Comparative Law of the American

Bar Association. This report of some 80 pages in length in no way sets up, nor does it answer, any of the real and concrete reasons which are advanced for the maintenance of the Connally Reservation, nor on the other hand does it in any way justify an abnegation of our constitutional rights. This is the real issue—and it is dodged under one subterfuge or another in that voluminous report. This report seems to be a capacious assessment and idealistic plea that conjectures world peace and order, all through abolition of the Connally Reservation. The arguments advanced, however, indicate shallow thinking with respect to the doctrines of sovereignty and limited government under the United States Constitution. Only two contentions in the report, one, the preliminary "argument," and the contentions advanced under Subd. (f), will be commented upon. The preliminary "argument" reads as follows:

> "Many able scholars have severely criticized the revision ever since it was first under discussion. It is logically offensive to right-thinking lawyers, jurists, philosophers and statesmen, because it violates the age-old precept that no man, no nation, should be judge in his own case."

To those American citizens who are motivated by loyalty to the United States, to the maintenance of its sovereignty and its constitutional principles, this kind of argument is a shifty type of pietism that completely begs the question. It should have no accordance in any of the panegyric of the American Bar Association or any of its component sections or committees.

However, putting to one side the implication contained in the quoted paragraph, it is to be noticed that the plea asserts that the Connally Reservation ". . . violates the age-old precept that no man, no nation, should be judge in his own case."

This postulation assumes that there is an obligation or duty on the part of the United States to join the World Court. No such obligation, either ethical or moral, confronts this country. This "age-old precept" only has application to a situation where a party has submitted himself to the jurisdiction of a court, and thereafter seeks to adjudicate his own lawsuit.

The right of such submission on the part of this country, the terms and conditions of such submission (or the right not to submit) are all embryonic rights of the United States, and no other country or countries. Further, with respect to the right of voluntary submission, it must be remembered that one of the original basic principles of the United Nations Charter was that of "the sovereign equality of all of its members." (Charter, Chapter 1, Article 2, Subd. 1.)

This is further apparent from the fact that all of the sovereign nations are given the right of executing or declining to execute a declaration acceding a general and compulsory jurisdiction to the World Court, effective, however, in accordance with the terms in the declaration of acceptance. (Court Statutes, Chapter 2, Article 36, Sections 1-5.) Whether the State will submit to the Court domestic questions is therefore entirely the decision of the State involved.

Accordingly, many of the members of the United Nations have righteously filed limited declarations of acceptance. For instance, Liberia, the Union of South Africa, India, Sudan, Pakistan and Mexico have all reserved to themselves disputes arising from mat-

ters that in the opinion of the respective governments involved are within the jurisdiction of that government. In addition to this, France reserves to herself "disputes relating to questions which, by international law, fall exclusively within the domestic jurisdiction," England, in substance, made a similar reservation. The United Arab Republic and Australia (both of whom have judges on the World Court) excluded from their acceptance of jurisdiction a variety of specific matters. For instance, Australia exempts disputes regarding its continental shelf and the natural resources thereof, and the waters bordering on Australia, unless certain stipulations are first met by the parties to the litigation.

Thus, it is apparent that the protection exercised by the United States in the limited acceptance filed with the World Court is no more than the protection demanded by other members of the United Nations. It is obvious and apparent that the qualified acceptance of compulsory jurisdiction is not only provided for and permitted under the Statutes, but is a common and accepted practice by members of the United Nations.

The argument attempted under Subdivision (f) in the Report of the Special Committee of the Section I find to be incautious and injudicious. The contention of the Special Committee set forth in Subdivision (f) is as follows:

"In view of the United States' veto power, under Articles 27(3) and 94 of the United Nations Charter, over ultimate enforcement by the Secretary Counsel, the really vital interests of the United States *are protected regardless of any action the Court might take.*" (Writer's emphasis.)

Purporting to consent to compulsory ipso facto jurisdiction by the World

Court in all legal disputes as is provided in Subd. 2 of Article 36 of the Court Statute and, through lack of objection, accepting the Court's right to determine its own jurisdiction in all disputes, as provided in Subd. 6 thereof, it is misleading and delusive to, at the same time, retain mental reservations and plan to nullify all unsatisfactory judgments by resort to the veto powers of the Security Counsel under Article 27(3) and 94 of the United Nations Charter through enforcement procedure.

Such an argument with a lack of full disclosure, not only to the World Court but to *all members of the United Nations* as well, of the true intent of this country in the event of adverse judgments or holdings, indicates a lack of moral strength.

The fight to maintain the Connally Reservation is a fight to maintain the sovereignty of the United States, its Constitution and laws. International government, under the United Nations and its multilateral treaties, is totalitarian. Unfortunately, the arguments relied upon by the proponents of repeal are quarried from the ideologies of world government, practically all of which negate and deny our constitutional principles of sovereignty in the people and limited government. Profundity of analysis insofar as the maintenance of our fundamental rights and liberties are concerned, is lacking from such proponents.

The ultimate fact that must be recognized is that the possession of sovereignty in the people (as in the United States) is the only thing that distinguishes a state or nation from a province, colony, municipality or dependency of a state or nation.

If sovereignty of the United States or people thereof is forfeited and relinquished through treaty or voluntary acquiescence in one way or another, the United States become then in effect a province or dependency of the United Nations. In the ultimate, if the people of the United States are no longer sovereign *in fact*, and they can no longer control or exercise sovereign rights, then they have receded toward where they were before the War of the Revolution when their sovereignty was fully exercised by Great Britain, and the enactment of law and taxation without representation was a reality.

The question restated is this: Are we to become provinces or colonies again, this time under the aegis of world government, or are we to remain free and independent, with sovereignty remaining in the people of this country and government existing under a delegation and limitation of powers? This is the real question that is presented.

The Connally Reservation in its present form is absolutely necessary for the maintenance of the United States Constitution, its principles and laws, and for the preservation of the sovereignty of this country.

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Paul Palmer
Morris Pfaelzer
John P. Pollock
Raymond R. Roberts
Benjamin W. Shipman
Glendon L. Tremaine
Guy E. Ward
Mary E. Waters
Louis M. Welsh
Philip F. Westbrook, Jr.
Francis M. Wheat
George H. Whitney
John Whyte
Richard H. Wolford
Gordon K. Wright

ALTERNATES

*Lester E. Olson
Edward S. Shattuck
Hugh L. Macneil
White McGee
*Frank Simpson, III
John C. Morrow
Grant B. Cooper
Hugh W. Darling
Chester I. Lappen
Helen Kemble
James L. Potts
Paul R. Hutchinson
Maynard J. Toll
Loyd Wright, Jr.
George Harnagel, Jr.
John E. Caldwell
George C. Hadley
Fulton Haight
A. Thomas Grazer
Leon L. Gordon
Chaplin E. Collins
James V. McCandless
David E. Agnew
Austin H. Ellis
*Richards D. Barger
Blase A. Bonpane
Arthur L. Murray
John H. Rice
Thomas L. Flattery
Glen Behymer
Knox Farrand
Alan G. Campbell
A. R. Early
Stafford R. Grady
*Leo J. Pircher
William R. Phillips
Donald H. Davidson
Charles E. R. Fulcher
George R. Johnson
C. Russell Hale
A. S. Halsted, Jr.
Sharp Whitmore
E. Burdette Boileau
James H. Kindel, Jr.
A. Hale Dinsmoor
Robert L. Hunt
*John J. Quinn, Jr.
Robert F. Schwarz
Carl A. Stutsman, Jr.
John U. Edwards
Everett B. Clary
*Arthur L. Alarcon
Jerry B. Riseley, Jr.
*Roderick M. Hills
*Preston B. Hotchkis
*Jeffrey M. Bucher
*Charles D. Silverberg

*Indicates members of the Junior Section

BROTHERS-IN-LAW

By
GEORGE
HARNAGEL, JR.

Firm Fun (IV)

» » ALONG WITH ADAM AND EVE, and many of their other successors in interest, we have discovered that it is sometimes much easier to start something than to stop it. Which is by way of saying that after sending Firm Fun (III) to the printer we took a solemn vow to forego all Firm Fun foolery in the future and to devote this department exclusively to those high ideals and purposes to which it should be dedicated, whatever they may be. But just then Dave Walkley walked in and reminded us that up in San Francisco there is the real live firm of WALKUP & DOWNING.[1]

Somehow that must have undermined our good resolution. For, when the list of those who had passed the spring, 1960, bar examination came to our attention a little bit later, we could not avoid noticing – much as we tried to – that the successful examinees could, if they wished, arrange themselves into some interesting law firms.

The liveliest partnership would no doubt be PEPPER, POPPERS & HOPPIN. BATTIN, BELTON & BUCK should have a lot of energy, but query as to DOUTT, MESSING & CYPHER.

Other alluring possibilities include: PRINZ & CASTLE; COX & CROW; HARDIN, STEELE & STONE; WEISMAN & SOLOMON; CLOSE, CALL, LUCKHARDT & WYNN; YOUNG, WONDER & WISE.

Bar News Bars News

"Interesting as political news may be to those involved directly, as well as sideliners, the *Bar News* must adopt an attitude of disdain as to such items. With news often – and obviously – scarce, such a policy forecloses an easy source of page-filling material.

"However, the hazards of welcoming political news contributions are obvious. There is the impossibility of providing adequate and equal space for all candidates and supporters as well as the danger of misunderstanding resulting in accusations of favoritism. . . .

"In short, members of the **Washington** State Bar Association are requested not to send material based on politics, or if sent, not to expect publication."–Notice in *Washington State Bar News.*

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Out of the Mouth of Babes (II)

The **Illinois** State Board of Law Examiners reports that it is baffled by some of the answers it has been getting to questions in Criminal Law and cites these examples:

"The general rule is that voluntary intoxication, as here, will not excuse a person's criminal conduct. However, the evidence shows he was extremely

[1]Now ensconced, so we not'ced recently, in the office building wing of the new Jack Tar Hotel. Incidentally, until you have driven into the "auto lobby" of the Jack Tar and registered by means of a closed television circuit and a pneumatic tube connecting you with the registration desk upstairs, you have not really lived in the electronic age.

inebriated. This might give rise to the doctrine of *Delirium Tremens.*"

"If Galt was deprived of life even for a short time as a result of Hill's unlawful conduct, Hill was guilty of involuntary manslaughter."

"H is guilty of murder. I hold this despite the fact that his wife is still alive because all of the elements of murder were present."

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Did you know that the Queens County Bar Association does not admit women members?

• • •

Campaign Comfort

Every four years, as a presidential election approaches and the politicians "view with alarm" what the other side has done or would do, we are comforted to recall a bit of doggerel that crops up now and then, with some variations, in one place or another. We're told it first appeared in *Harper's Weekly* back in 1857. The last place we saw it was in the pages of *Chicago Bar Record,* publication of the **Chicago** Bar Association. That version, somewhat shorter than others, was as follows:

My granddad, viewing earth's worn cogs,
Says, "The country's going to the dogs."

His granddad, in his house of logs,
Said, "The country's going to the dogs."

His granddad, in the Flemish bog,
Said, "The country's going to the dogs."

And here and now, I wish to state,
"The dogs have had a good long wait."

• • •

The Bar Association of the **District of Columbia** has created a Research Foundation "to advance research and education in the law, to improve the administration of justice, and pursuant thereto to receive, manage and disburse the funds of the Foundation."

STATEMENT REQUIRED BY THE ACT OF AUGUST 24, 1912, AS AMENDED BY THE ACTS OF MARCH 3, 1933, JULY 2, 1946 AND JUNE 11, 1960 (74 STAT. 208) SHOWING THE OWNERSHIP, MANAGEMENT, AND CIRCULATION OF

Los Angeles Bar Bulletin published monthly at Los Angeles, California for September, 1960.

1. The names and addresses of the publisher, editor, managing editor, and business managers are:

Publisher: Los Angeles County Bar Association, 510 S. Spring St., Los Angeles 13, Calif.

Editor: Frank E. Loy, 433 S. Spring St., Los Angeles 13, Calif.

Managing editor: None.

Business manager: Robert M. Parker, 229 East 4th St., Los Angeles 13, Calif.

2. The owner is: (If owned by a corporation, its name and address must be stated and also immediately thereunder the names and addresses of stockholders owning or holding 1 per cent or more of total amount of stock. If not owned by a corporation, the names and addresses of the individual owners must be given. If owned by a partnership or other unincorporated firm, its name and address, as well as that of each individual member, must be given.)

Los Angeles County Bar Association, 510 S. Spring St., Los Angeles 13, Calif.

Grant B. Cooper, President, 3910 Oakwood Ave., Los Angeles 4, Calif.

Maynard J. Toll, Secretary, 433 S. Spring St., Los Angeles 13, Calif.

Frank C. Weller, Treasurer, 111 West 7 St., Los Angeles 14, Calif.

3. The known bondholders, mortgagees, and other security holders owning or holding 1 per cent or more of total amount of bonds, mortgages, or other securities are: (If there are none, so state.) None.

4. Paragraphs 2 and 3 include, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting; also the statements in the two paragraphs show the affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner.

5. The average number of copies of each issue of this publication sold or distributed, through the mails or otherwise, to paid subscribers during the 12 months preceding the date shown above was: (This information is required by the act of June 11, 1960 to be included in all statements regardless of frequency of issue.) 4203.

(Signature of editor, publisher, business manager, or owner) Robert M. Parker.

Sworn to and subscribed before me this 21st day of September, 1960.

(SEAL) MARGUERITE F. CRIPPS

My Commission expires Jan. 3, 1964.

Notary Public in and for the County of Los Angeles, State of California.